

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 KORY T. O'BRIEN,) Case No.: 1:21-cv-00856-SAB (PC)
12 Plaintiff,)
13 v.) ORDER DIRECTING CLERK OF COURT TO
14 RITA DIAZ, et al.,) RANDOMLY ASSIGN A DISTRICT JUDGE TO
15 Defendants.) THIS ACTION
16) FINDINGS AND RECOMMENDATIONS
17) RECOMMENDING DISMISSAL OF CERTAIN
CLAIMS
(ECF Nos. 9, 10)

18 Plaintiff Kory T. O'Brien is proceeding *pro se* and *in forma pauperis* in this civil rights action
19 pursuant to 42 U.S.C. § 1983.

20 On July 27, 2021, the undersigned screened Plaintiff's complaint and found that Plaintiff stated
21 a cognizable claim for retaliation against Defendants Diaz and Moore. (ECF No. 9.) However,
22 Plaintiff was advised that he failed to state any other cognizable claims. (*Id.*) Plaintiff was granted the
23 opportunity to file an amended complaint or a notice of intent to proceed on the claim found to be
24 cognizable. (*Id.*)

25 On August 13, 2021, Plaintiff notified the Court of his intent to proceed on the retaliation claim
26 against Defendants Diaz and Moore. (ECF No. 10.) Accordingly, the Court will recommend that this
27 action proceed against Defendants Rita Diaz and Jeramy Moore. Fed. R. Civ. P. 8(a); Ashcroft v.
28 Iqbal, 556 U.S. 662, 678 (2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007); Hebbe v.

1 Pliler, 627 F.3d 338, 342 (9th Cir. 2010).

2 Based on the foregoing, it is HEREBY ORDERED that the Clerk of Court shall randomly
3 assign a District Judge to this action.

4 Further, it is HEREBY RECOMMENDED that:

- 5 1. This action proceed against Defendants Rita Diaz and Jeramy Moore for retaliation;
6 and
7 2. All other claims be dismissed for failure to state a cognizable claim.

8 These Findings and Recommendations will be submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days**
10 after being served with these Findings and Recommendations, Plaintiff may file written objections
11 with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
12 Recommendations.” Plaintiff is advised that failure to file objections within the specified time may
13 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
14 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

15
16 IT IS SO ORDERED.

17 Dated: **August 16, 2021**


UNITED STATES MAGISTRATE JUDGE